

BEFORE THE STATE PARKS AND RECREATION BOARD AND
THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
12.14.101, 12.14.105, 12.14.110,)	PROPOSED AMENDMENT, ADOPTION,
12.14.115, 12.14.120, 12.14.125,)	AND REPEAL
12.14.130, 12.14.150, 12.14.155,)	
12.14.160, and 12.14.165, the adoption)	
of NEW RULE I, and repeal of)	
12.14.135, 12.14.140, and 12.14.145)	
pertaining to commercial use rules)	

TO: All Concerned Persons

1. On June 3, 2014, at 6:00 p.m., the State Parks and Recreation Board (board) and the Fish and Wildlife Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The board and commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 23, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

12.14.101 DEFINITIONS (1) "Allocation" means distributing limited use opportunities when a rationing system is in place.

(2) "Authorization" means written permission granted to a person or entity by the department to conduct commercial use.

(3) "Board" means the State Parks and Recreation Board of the state of Montana.

~~(3)~~ (4) "Commercial use" means any person or entity that utilizes land under the control, administration, and jurisdiction of the Montana Department of Fish, Wildlife and Parks for consideration. Commercial use includes any person, group, or organization, that makes or attempts to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation from participants in activities occurring on land that is under the control, administration, and jurisdiction of the department. This includes nonprofit organizations and educational groups that receive money from participants in activities occurring on department land. This includes a person whose business

operates on department land, regardless of that person's physical presence at the site, but does not include a person who rents, sells, or otherwise provides equipment or merchandise that is used on department land unless the renting, selling, delivering, or providing of equipment or merchandise takes place on department land. Examples of commercial use that are governed by these rules include but are not limited to: trail rides, guided walks or tours, float trips, guided angling or hunting, game retrieval, professional dog training, equipment rentals, retail sales, food concessions, filming, firewood cutting, construction-related activities, research when accompanied by paying clients, or any combination thereof.

~~(4)~~ (5) "Commission" means the ~~Department of Fish, and Wildlife and Parks~~ Commission of the state of Montana.

~~(5)~~ (6) "Concession service" means a commercial business that provides multiple services or products on department land. Examples include but are not limited to marinas, lodging, equipment rental or sales, retail sales, and food services.

~~(6)~~ (7) "Consideration" means something of value given or done in exchange for something of value given or done by another.

~~(7)~~ (8) "Department" means the Department of Fish, Wildlife and Parks of the state of Montana.

(9) "Department land" means all lands under the control, administration, or jurisdiction of the Department of Fish, Wildlife and Parks.

~~(8)~~ (10) "Educational group" means an organized group that is officially recognized as an educational or scientific institution by a federal, state, or local government entity. Documentation of this recognition must be on institutional letterhead and include a signature by the head of the institution/department and documentation of official educational or scientific tax exemption as granted by the Internal Revenue Service.

~~(9) "Fishing access site" means a site or area designated by the department as a fishing access site.~~

~~(10)~~ (11) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

~~(11)~~ (12) "Mitigation" means an enforceable measure, within the authority of the agency or mutually agreed to by the permit holder that is designed to reduce or prevent undesirable effects or impacts of the proposed use.

~~(12)~~ (13) "Nonprofit organization" means an organization that is officially registered as a 501(c)(~~3~~) tax exempt organization.

~~(13)~~ (14) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

~~(14)~~ (15) "Ration" means to regulate use intensity by limiting the amount of use on a site.

~~(15)~~ (16) "Restricted water body" means a body of water regulated by special department rules governing commercial use, such as rules that restrict the timing, location, amount, or type of commercial use that occurs. "Restricted water body" ~~may also mean~~ includes a body of water that is under a cooperative management agreement with another agency concerning commercial use.

~~(16)~~ (17) "Site" means an individual unit of land, or portion thereof, owned or managed by the department.

~~(17)~~ "State park" means a site or area designated by the department as a state park.

(18) "Water-based service provider" means any person who for consideration provides any facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to float or otherwise recreate on the water in the absence of hunting or angling, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a person in accompanying that person.

~~(19)~~ "Wildlife management area" means a site or area designated by the department as a wildlife management area or a wildlife habitat protection area.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.105 APPLICABILITY OF COMMERCIAL USE RULES (1) The following rules shall govern commercial use, as defined in ARM 12.14.101, that occurs on ~~lands under the control, administration, and jurisdiction of the department~~ land and restricted waterbodies. ~~Unless otherwise noted in these rules, these rules apply to fishing access sites, state parks, wildlife management areas, administrative sites, and other lands under the control, administration, and jurisdiction of the department.~~

(2) The department may apply these rules to leased lands and easements when specific terms, conditions, contracts, or agreements authorize the department ~~has authorization to manage use of these lands. This does not include block management lands or lands under a conservation easement.~~

(3) Noncompliance with the commercial use rules constitutes a violation of commission and board rules and regulations and as such may be punishable by citation and suspension or revocation of commercial use privileges at department sites.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.110 EXCEPTIONS TO APPLICABILITY OF COMMERCIAL USE RULES (1) These commercial use rules do not apply to commercial activities or uses that are initiated or invited by the department for the purpose of manipulating, enhancing, or otherwise improving the habitat of a site. Such uses shall continue to be governed by the department's land lease-out policy. Examples include but are not limited to livestock grazing, farming, haying, fencing, and timber harvest.

(2) These commercial use rules do not apply to the leasing of department

land for communication towers, utility easements, and granting of right-of-way. These types of commercial use shall continue to be governed by the department's land lease-out policy.

(3) These commercial use rules do not apply to the leasing of department oil and gas reserves. These uses shall continue to be governed by the department's oil and gas reserves leasing policy.

(4) These commercial use rules do not apply to the transferring of vehicles or people to or from a department site.

(5) These commercial use rules do not apply to the collection of antlers.

(6) These commercial use rules do not apply to trapping or commercial activities under Title 87, chapter 4, parts 2 through 10, MCA (taxidermists, fur dealers, alternative livestock, shooting preserves, fish ponds, sale of game, menageries and zoos, game bird farms, and fur farms), except commercial dog training and field trials conducted for commercial purposes.

(7) These commercial use rules do not apply to the press or the news media when photographing, filming, or reporting on activities that occur on department land.

(8) These commercial use rules do not apply to consignment sales when the department sells merchandise on behalf of a business and a portion of the revenue is allocated to the department.

(9) These commercial use rules do not apply to commercial activities or uses that are initiated or invited by the department for the purpose of addressing public safety concerns. Examples include but are not limited to hazardous tree removal and fuel reduction efforts to reduce fire danger.

(10) These commercial use rules do not apply to fishing tournaments conducted by nonprofit organizations.

(11) These commercial use rules do not apply to an individual photographer or videographer operating on his or her own without the use of models, props, crew members, or clients.

(12) These commercial use rules do not apply to block management lands.

(13) These rules do not apply to concession contracts as described in ARM 12.14.155.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.115 GENERAL POLICY (1) Department land belongs to the people of Montana and is managed by the department ~~manages these sites and associated resources~~ in trust for the benefit of current and future generations of the people. The department's ~~primary~~ responsibilities ~~are to~~ include maintaining or enhancing the fish, wildlife, natural, cultural, park, and recreational resources for public benefit of these sites and to provide benefits to the public from these sites.

(2) Some types of commercial use can help the department to achieve its resource and visitor use management goals, ~~and/or~~ provide desired services and amenities to the public, and create economic benefits to nearby communities. when properly managed. Commercial use must be properly managed to protect the safety of visitors, prevent or minimize conflicts with the public, prevent adverse impacts to

natural and cultural resources, and the other intended purposes of a site.

(3) Commercial use on department land is a privilege, not a right. Authorization to conduct commercial use may be denied, amended, suspended, or revoked at any time for cause. Historical commercial use of a site does not convey a right to conduct commercial use in the future. If it becomes necessary to ration and allocate commercial use, the department is not required to allocate opportunities based on historical use of a site.

(4) The department may prohibit, restrict, condition, or otherwise manage commercial use, including placing stipulations on the type, timing, location, duration, and quantity of commercial use. Reasons for prohibiting, restricting, conditioning, or otherwise managing commercial use include but are not limited to:

- (a) protecting resources or mitigating impacts to resources;
- (b) preventing or minimizing conflicts with the intended purpose for which the department acquired, maintains, or manages a site;
- (c) preserving the public's ability to recreate on or otherwise use a site;
- (d) providing for the public's safety and welfare; or
- (e) other purposes identified by the department.

(5) Restrictions, including prohibitions, rationing, and allocation on water-based outfitters and guides on rivers and fishing access sites shall be governed by the department's statewide river recreation rules.

(6) The purpose and management objectives can vary from one type of department land to another and from one site to another. The public's use and expectations can vary from one type of department land to another and from one site to another. The opportunities to conduct commercial use may be different depending upon where the use would occur, and the department may develop policies that provide additional guidance for managing commercial use ~~at fishing access sites, state parks, wildlife management areas, and other department land.~~

(7) The department may establish special criteria for a particular site or prohibit commercial use altogether based on the management objectives and conditions of that site.

(8) The department may prohibit or condition commercial use that would displace the general public. The department may temporarily alter public use opportunities at fishing access sites and state parks to accommodate commercial use on a case-by-case basis in the interest of public safety and security or when there is the potential for short-term conflicts.

(9) The department must comply with federal aid requirements when authorizing commercial use on department land purchased or managed with federal aid.

(10) Commercial hunting outfitting is prohibited on all department land and on water bodies that are located entirely within the boundaries of department land. Commercial fishing outfitting is prohibited on all wildlife management areas. The department may authorize commercial use that is solely for the purpose of assisting the public in the retrieval of legally harvested game animals. The department may authorize a commercial hunting outfitter to:

- (a) travel on a designated trail across department land solely for the purpose of gaining access to publicly owned land where the commercial hunting outfitter is authorized to conduct use; and

(b) use a fishing access site solely for the purpose of gaining access to water bodies where the commercial hunting outfitter is authorized to conduct use.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.120 COMMERCIAL USE PERMITS (1) A permit is required in advance to conduct commercial use on department lands and restricted waterbodies under the control, administration, and jurisdiction of the department.

~~(2) The department administers two types of commercial use permits:~~

~~(a) fishing access site permit; and~~

~~(b) restricted use permit.~~

~~(3)~~ (2) The department may issue a commercial use permit to a person as an individual, or as a representative of an entity or business. When authorizing water-based fishing outfitting or guiding, the department may only issue the permit to a licensed outfitter or guide. The applicant must obtain all other licenses or permits required by state or federal law in order to receive a commercial use permit.

~~(4) A commercial use permit is not a property right and may be revoked, amended, or suspended at any time for cause. Causes for revoking, amending, or suspending a permit include but are not limited to the following:~~

~~(a) failure to comply with the commercial use rules;~~

~~(b) failure to pay required permit fees;~~

~~(c) falsifying records of use;~~

~~(d) failure to comply with the terms of the permit;~~

~~(e) failure to comply with state or federal rules or laws pertaining to resource and land management;~~

~~(f) failure to obtain other required state or federal permits;~~

~~(g) impacts on resources or the public; or~~

~~(h) changing conditions or management objectives at a site.~~

~~(5) The availability, terms, and conditions of a commercial use permit may vary based on the regulations and management plan in place at the site where the use would occur. The department may issue a citation for failure to comply with the terms of the permit. The department may refuse applications for a permit if the use would occur at a site where commercial use is rationed and there are no additional opportunities to conduct such use.~~

(3) A commercial use permit authorizes the permittee to conduct commercial use subject to the conditions designated on the permit.

(4) A commercial use permit is valid for the time period specified on the permit, not to exceed five years. The permit holder may request changes to a multi-year permit through submission of an updated plan of operation or other material.

(5) The department may place conditions on the commercial use permit, including but not limited to the type, timing, location, duration, volume of the use, and any other conditions the department deems necessary. The department's statewide river recreation rules shall govern the development of conditions for water-based outfitters and guides on rivers and fishing access sites.

(6) The department may require commercial users to report their use of department land. The department may require commercial users to maintain and

have on their person for department inspection a logbook for recording commercial use. The department shall include specific reporting requirements as permit or contract stipulations.

(7) A commercial use permit may only be used by the holder of the permit. The permit holder may not sell, lease, or rent the permit, or otherwise receive compensation from another person for the opportunity to use the permit. The permit holder may hire or contract persons to provide authorized services provided that said persons do not recruit clients, make agreements with clients concerning monetary consideration or services provided, collect fees from clients, or advertise any business other than the permitted business when conducting the permitted use. The permit holder is responsible for ensuring that the persons hired or contracted comply with the terms of the permit.

(8) The permit holder may pay an agent to recruit clients, make arrangements with clients concerning monetary consideration or services provided, and collect fees from clients provided that the agent does not conduct the authorized services.

(9) A commercial use permit is not transferable and is void when a business is sold or transferred. Upon the sale or transfer of a permitted business, the person selling the business shall notify the new owner that the new owner is required to obtain a new commercial use permit pursuant to this subchapter.

(10) If the recipient of a commercial use permit sells or transfers in entirety the part of his/her business that is operated under that commercial use permit, the department shall issue a new commercial use permit to the new owner so long as the seller has remitted all fees due to the department and so long as the buyer has obtained all other licenses or permits required by state or federal law and agrees to the terms of the permit. The new permit shall have the same expiration date as the seller's permit.

(11) If the recipient of a commercial use permit sells or transfers in entirety the part of their business that operated under that commercial use permit, any rationed units of use that were previously allocated to the seller shall be reallocated to the new owner of that business. Upon the sale or transfer of a permitted business, the person selling or transferring the business shall notify the new owner that the use of rationed units of use is subject to change pursuant to rules adopted by the commission and that no property right attaches to the rationed units of use.

(12) The recipient of a commercial use permit may not sell, lease, rent, or otherwise receive compensation from another person for the opportunity to use client days or other allocated units of use, temporarily, or permanently except that Smith River outfitters may lease, rent, or otherwise receive compensation from another Smith River outfitter for the opportunity to use a Smith River outfitter launch within a single use season.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.125 FISHING ACCESS SITE PERMIT (1) An outfitter or water-based service provider must possess and have on their person a valid fishing access site permit when conducting commercial use at fishing access sites, ~~and other~~

~~department land, except an~~ An outfitter or water-based service provider with a valid ~~restricted commercial~~ use permit for a restricted water body does not need a fishing access site permit to conduct commercial use at fishing access sites ~~and other department land that provide access to that restricted water body.~~

(2) A guide or person conducting work for a water-based service provider must possess and have on their person a valid fishing access site permit when conducting commercial use at fishing access sites ~~and other department land that provides access to water bodies.~~

(3) The department may issue a commercial use ~~A fishing access site permit that~~ authorizes an outfitter or water-based service provider to conduct commercial use at any fishing access site ~~or other department land in the state that provides access to a nonrestricted water body unless the department specifies that a restricted use permit is required for the site. An outfitter or water-based service provider must obtain a restricted use permit to conduct water-based outfitting at a fishing access site or other department land that provides access to a restricted water body.~~ Such permits shall be referred to as fishing access site permits.

(4) The department may issue a ~~A fishing access site permit that~~ authorizes a guide ~~or outfitter's assistant~~, operating under the authority of an outfitter, or a person conducting work for a water-based service provider, to conduct commercial use at any fishing access site ~~or other department land~~ for which the outfitter or water-based service provider is authorized to conduct use.

(5) A fishing access site permit is valid for the time period specified on the permit.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.130 FISHING ACCESS SITE COMMERCIAL USE PERMIT:

APPLICATION PROCESS (1) A commercial use permit application must be submitted to the regional office that oversees the site or sites where the use will occur. If use is proposed for sites located in more than one department administrative region, the application may be submitted to one of the regional offices and the department may issue a single permit to authorize the use.

(2) The completed application shall be submitted at least 45 days before the use is intended to begin unless authorized by the department.

(3) The department will process complete applications. The department may require additional time to process an application if the department determines that an environmental analysis is required.

~~(4)~~ (4) A fishing access site permit may be obtained at a department regional office or through the department's internet licensing system so long as the applicant provides the required application information and remits the required permit fee.

~~(2)~~ (5) The department may requires the following when applying for a fishing access site commercial use permit when applicable:

- (a) a completed permit application form;
- (b) an outfitter or guide license number if providing angling services;
- (c) an automated license system number;
- (d) permit fee; ~~and~~

- (e) deposit or damage security bond;
- ~~(e)~~ (f) proof of insurance that the department judges sufficient to protect the public and the state of Montana from liability and property loss-;
- (g) proof of workers' compensation or an independent contractor exemption certificate;
- (h) information explaining how the proposed use would benefit the public's resources or the public's enjoyment of the site; and
- (i) other relevant information in sufficient detail to allow the department to evaluate the nature and impact of the proposed activity, including measures the applicant will use to prevent or mitigate adverse impacts.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.150 RESTRICTED COMMERCIAL USE PERMITTING DECISIONS

(1) The department has discretion over whether to issue a ~~restricted~~ commercial use permit. Permitting decisions are based on the following factors to the extent that they are relevant:

- (a) conformance with laws, rules, policies, management plans, and land use plans;
- (b) conformance with strategic vision and goals for the department;
- ~~(b)~~ (c) contribution to the overall mission, goals, and objectives of the site;
- ~~(c)~~ (d) public safety;
- ~~(d)~~ (e) conflicts with other users in regard to type of use, timing, duration, location, site capacity, and other similar considerations;
- ~~(e)~~ (f) resource impacts to natural and cultural resources and protection;
- (f) (g) extent to which the public interest is served;
- (g) (h) effects on adjacent land;
- ~~(h)~~ (i) whether in the past the applicant complied with the terms of his/her permit or other authorization from the department and other agencies;
- ~~(i)~~ (j) whether the department has the fiscal and human resources to oversee administer the proposed use; and
- ~~(j)~~ (k) such other circumstances that the department finds appropriate.

(2) The availability, terms, and conditions of a ~~restricted~~ commercial use permit may vary based on the regulations and management plan in place at the site where the use would occur. Permitting decisions for commercial use at a wildlife management area must comply with a statewide plan for authorizing and administering commercial use at wildlife management areas. The statewide commercial use plan for wildlife management areas shall:

- (a) identify the types of commercial use that may be authorized;
- (b) establish the general terms and conditions that may be authorized; and
- (c) establish the methods for allocating commercial use permits.

(3) The department's statewide river recreation rules shall govern permitting decisions that would ration, allocate, or otherwise restrict water-based outfitting and guiding opportunities on rivers and fishing access sites. This does not include permitting decisions when the applicant or permit holder has violated the terms of a permit or violated department rules or regulations.

(4) Upon adoption of these rules, the department may continue to issue permits that were established prior to the adoption of these rules. The department shall administer these permits consistent with these commercial use rules.

(5) For permit systems established prior to the adoption of these commercial use rules, when a ~~restricted~~ commercial use permit expires, the department shall review the previously authorized commercial use and may issue a new ~~restricted~~ commercial use permit to the permit holder upon application so long as the applicant complied with the terms of his/her permit or other authorization from the department and other agencies and so long as the applicant complied with the laws, rules, and policies of the department and other agencies. The department may adjust the terms and conditions of the new permit, including the allocated units of use.

(6) For permit systems established after the adoption of these commercial use rules, the department may develop a permit renewal system under which the previous permit holder and other commercial users are eligible to apply for the new permit. The department's statewide river recreation rules shall govern the development of a permit renewal system for water-based outfitting and guiding on rivers and fishing access sites.

~~(7) The regional park manager shall be responsible for restricted use permitting decisions at state parks and fishing access sites. The regional supervisor shall be responsible for restricted use permitting decisions at wildlife management areas.~~

~~(8)~~ (7) A person who has been denied a ~~restricted~~ commercial use permit or a person whose commercial use permit has been suspended or ~~cancelled~~ revoked may appeal the permitting decision in writing to the director within 30 days of the date of mailing of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal.

~~(9)~~ (8) The director or the director's designee shall issue a written decision on the appeal. The director's decision is final.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.155 CONCESSION CONTRACT (1) The department shall waive the requirement to obtain a commercial use permit when the commercial use is authorized through a concession contract. The department may develop a concession contract to authorize a commercial business on department land when the department determines that the concession is needed to meet the management goals or enhance visitor experience for a specific site. Food and beverage concessions are generally not considered necessary for meeting the management goals for fishing access sites and wildlife management areas. ~~The department shall waive the requirement to obtain a commercial use permit when the commercial use is authorized through a concession contract.~~

(2) The department shall honor the terms set forth in contracts established prior to the adoption of these rules. The department shall apply these rules when those contracts ~~expire~~ are renewed.

(3) When developing and administering concession contracts, the department shall follow the state purchasing and contracting guidelines.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.160 COMMERCIAL USE FEES (1) The department may require payment of fees for conducting commercial use on department land ~~owned or managed by the department~~. Commercial use fees for state parks shall be adopted by the board. Permit Commercial use fees for all other department land pursuant to this rule shall be established through adopted by the commission rulemaking. The department ~~shall~~ may establish concession contract fees separately on a case-by-case basis. The commission and board may adjust permit fees as necessary to reflect changes in costs and the market and in situations where the department has an agreement or joint-permit system with other agencies.

(2) The department may consider the following when selecting a fee system from the commercial use fee rules:

- (a) the types of commercial use that occur at the site;
 - (b) the cost of administering the commercial use permit and monitoring the commercial use;
 - (c) the amount of revenue generated by the commercial use fee;
 - (d) the overall benefit of the commercial use to visitor enjoyment and experience;
 - (e) input from the commercial users;
 - (f) consistency with fee systems in place on other department land;
 - (g) consistency with other state and federal fee systems; and
 - (h) other factors identified by the department.
- (3) Fishing access site permit fees are not refundable.

~~(2)~~ (4) The department has discretionary authority to adjust a ~~restricted~~ commercial use permit fee upward or downward to accommodate the nature of the activity, compensate for site impacts or department staffing needs, or for other unique circumstances pertaining to the permitted activity.

~~(3)~~ (5) The department may adjust commercial use fees on a case-by-case basis for educational groups when the following conditions are met:

- (a) the group is from a bona fide institution that meets the definition of an educational group;
- (b) the group provides an acceptable written explanation of the educational purpose of the visit; and
- (c) the use is not primarily for recreational purposes.

~~(4)~~ (6) The department may adjust commercial use fees on a case-by-case basis when the commercial use permit holder:

- (a) donates all proceeds, minus expenses, from the use or event to the management or improvement of fish, wildlife, ~~and~~ or parks, including the maintenance, management, or the improvement or development of facilities; or
- (b) donates all proceeds, minus expenses, from the event or activity to a nonprofit organization or charitable cause and is not compensated for the service.

~~(5)~~ (7) The department may adjust commercial use fees on a case-by-case basis for special events involving children under the age of thirteen.

~~(6)~~ (8) The department may adjust commercial use fees on a case-by-case

basis for commercial use when the sole purpose of the use is to promote department land and resources.

~~(7)~~ (9) The department may charge a processing fee for recovery of costs associated with preparing an environmental analysis document when processing a permit application.

~~(8)~~ (10) The department may charge a processing fee for recovery of costs associated with issuing a new ~~restricted~~ commercial use permit when a business is sold or transferred.

~~(9)~~ (11) Applicants must pay the required fees by the date specified in the terms of the permit.

~~(10)~~ (12) With approval from the Legislature, the department shall use the permit fees from commercial use at fishing access sites to help support the fishing access site program, river recreation management, and enforcement.

~~(11)~~ (13) The department may retain, amend, or replace an existing fee system.

~~(12)~~ (14) The department may require a minimum annual fee for administering permits or when authorizing commercial use in cooperation with another agency.

~~(13)~~ (15) The department may require a permit holder to pay a fee in advance that is an estimate of the actual amount that will be due by the date specified in the terms of the permit.

~~(14)~~ (16) The department may suspend or revoke a permit, or assess a penalty fee if the fee is not paid in full by the date specified in the terms of the permit.

AUTH: 2-4-102, 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: 2-4-102, 23-1-105, 23-1-106, 87-1-303, MCA

12.14.165 RATIONING AND ALLOCATION OF COMMERCIAL USE

(1) The department's statewide river recreation rules shall govern the rationing and allocation of commercial use on rivers, including fishing access sites that provide access to rivers.

(2) The ~~regional park manager or regional supervisor~~ department may recommend that the commission or board ration and allocate commercial use ~~at a state park, wildlife management area, fishing access site on department land~~ that provides access to lakes, or department administrative site. The department may consider the following when making rationing and allocation recommendations to the commission or board:

- (a) laws, rules, policies, management plans, and land use plans for the site;
- (b) overall mission, goals, and objectives of the site;
- (c) input from the public;
- (d) public safety concerns;
- (e) biological, natural, or cultural resource conditions;
- (f) social conditions;
- (g) user conflicts;
- (h) past performance of commercial users;
- (i) public demand for commercial use; and

(j) other factors as determined by the department.

(3) The department shall describe what actions have already been taken by the department to address a particular problem or concern, why rationing is necessary, and how rationing of use would address a particular problem or concern.

(4) To the extent possible, the department must monitor and evaluate commercial use of a site to determine whether rationing is necessary and to assess whether rationing has improved conditions.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

4. The rule as proposed to be adopted provides as follows:

NEW RULE I SUSPENSION OR REVOCATION OF PERMIT (1) A commercial use permit is not a property right and may be suspended or revoked for cause.

(2) The department may suspend a permit for up to six months. When a permit is suspended, the permit holder may not conduct commercial use authorized by the permit during the period of the suspension. The department shall determine the duration of the suspension, including when the suspension shall go into effect, based on the severity of the violations.

(3) Causes for suspending a permit include:

(a) repeated willful, purposeful, or negligent violation of the commercial use rules or specific river use rules;

(b) repeated willful, purposeful or negligent falsification of use records;

(c) repeated willful, purposeful or negligent failure to comply with the terms of the permit;

(d) acts that negatively limit the opportunities or use by the general public of resources covered under the permit;

(e) acts that are harmful to natural resource values; and

(f) acts that endanger the health, safety, and welfare of the public.

(4) When a permit is revoked, the permit is no longer valid and the former permit holder is no longer authorized to conduct commercial use at locations authorized under the revoked permit.

(5) Causes for revoking a permit include the following:

(a) conducting commercial use while a permit is suspended;

(b) repeated willful, purposeful, or negligent violation of the commercial use rules or specific river use rules after having been formally placed on suspension;

(c) repeated willful, purposeful, or negligent falsification of use records after having been formally placed on suspension; and

(d) repeated failure to comply with the terms of the permit after having been formally placed on suspension.

(6) Upon revocation of a permit, any rationed units of use that were previously allocated to the permit holder are no longer valid and the department may reallocate the rationed units of use to another applicant.

(7) A person whose permit has been revoked may reapply for a permit after a period of three full-use seasons from the date on which the permit was revoked.

There is no guarantee that a permit will be available at the time that person reapplies for a permit. Any rationed units of use that were previously allocated to the permit holder for use on a restricted use river will not be reserved.

(8) A person whose permit has been suspended or revoked may appeal the permitting decision in writing to the director within 30 days of the date of mailing of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal. The director's decision is final.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

5. The department proposes to repeal the following rules:

12.14.135 FISHING ACCESS SITE PERMITTING DECISIONS

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.140 RESTRICTED USE PERMIT

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.145 RESTRICTED USE PERMIT: APPLICATION PROCESS

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

REASON: The commission adopted the commercial use rules in 2005 and amended the rules in 2009. Since then several administrative changes have occurred, including the establishment of the board by the 2013 Legislature, requiring amendments to the rules. The proposed amendments incorporate language that was previously found in the commercial fee rule which is more appropriate for the administrative rule. The amendments discontinue the term "restricted use permit." The restricted use permit and fishing access site permit will be referred to as commercial use permits to simplify the permit system and make the intent of the permit clear. Amendments also further specify the criteria when the department may adjust the commercial use fees. The proposed changes will require the permit holder to donate all proceeds, minus expenses, in order to be considered for a fee adjustment. The commission and board are proposing a new rule that will provide a greater explanation of the causes for suspending and revoking a permit.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Fish, Wildlife and Parks, Attn: Commercial Use Rules, P.O. Box 200701, Helena, MT 59620-0701; fax (406) 444-4952; or e-mail FWPCCommercialUseComments@mt.gov, and must be received no later than June

13, 2014.

7. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment, adoption, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Tom Towe
Tom Towe, Chairman
State Parks and Recreation Board

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion, Chairman
Fish and Wildlife Commission

Certified to the Secretary of State April 28, 2014.